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<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	10/712,459	FLOYD ET AL.	
	Examiner	Art Unit	
	Ehud Gartenberg	3746	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 6/6/2005.
2. ☒ The allowed claim(s) is/are 1-20.
3. ☒ The drawings filed on 13 November 2003 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |   |
|--|---|
| 1. <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)                       |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date <u>6/6/2005</u> | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                               | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|  | 9. <input type="checkbox"/> Other _____.  |

### EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interviews with Thomas Otterlee on 3/18/2005 and on 6/15/2005. For the sake of clarity, the Examiner's Amendment of 3/18/2005 is hereby canceled.

The application has been amended as follows:

On p. 19, in the Abstract, l. 9 of the page, "aperture to" has been changed to -- aperture directly to - -

On p. 2 of the description, l. 18 of the page, "aperture to" has been changed to -- aperture directly to - -

On p. 14, Claim 1 has been amended as follows:

On l. 10 of the page, "second flow path;" has been changed to -- second and substantially unobstructed flow path; --

on l. 15 of the page, "path." Has been changed to -- path; the first flow path and the second flow path sharing a common exhaust aperture. --

On p. 16, Claim 10 has been amended as follows:

On l. 1 of the page, "suited for use" has been changed to -- in combination --;

On l. 5 of the page, "housing, and a second aperture" has been changed to -- housing directly from the recuperator, and a second and substantially unobstructed aperture --

On p. 18, Claim 18 has been amended as follows:

On l. 8 of the page, "device;" has been changed to -- device, and the remaining portion of the flow to a substantially unobstructed exhaust; --

On l. 9 of the page, "the flow" has been changed to the -- the desired portion of the flow --

On l. 12 of the page, "temperature." Has been changed to -- temperature; wherein the flow of fluid exhausts through said exhaust regardless of the position of the control member. --

***Allowable Subject Matter***

2. Claims 1-20 are allowed.

3. The following is an examiner's statement of reasons for allowance: prior art does not teach in combination with the other limitations of the independent claims the method and the apparatus for practicing said method, comprising a flow conduit having one inlet and one outlet, and two selectable flow paths, one of them comprising a heat exchanger and the other being unobstructed. Regarding claim 10, patentable weight was given to the preamble, in particular "(micro)turbine engine" (the patentable weight was given to "turbine"), because it breathes life and meaning into the claim through the fact that its flow of exhaust gas is later claimed in the body of the claim. In other words, the claimed "exhaust gas" must originate from a turbine engine.

The limitation "aperture" was construed in the broad three-dimensional sense:

Main Entry: **ap·er·ture** 4

Function: *noun*

1 : an opening or open space : HOLE

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

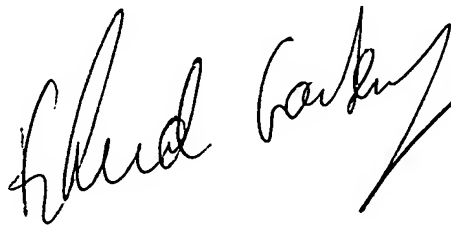
4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Foote 2869324, Pfenninger 2499108.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ehud Gartenberg whose telephone number is 571 272 4828. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy Thorpe can be reached on 571 272 4444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Ehud Gartenberg', with a long, sweeping horizontal stroke extending to the right.

Ehud Gartenberg  
Primary Examiner  
Art Unit 3746

06152005